

Appl. No. 10/057,215
Amdt. dated August 29, 2003
Reply to Office Action of March 25, 2003

Remarks:

The present invention is concerned with foamer products designed for use in personal care items such as shampoos and the like. The preferred foamer products are in the form of aqueous liquids containing therein enzymatically hydrolyzed wheat gluten protein. The products contain from about 15-25% by weight solids and a maximum of up to about 2.5% by weight ash therein. These products also preferably exhibit an initial shaker foam test height of at least about 140 ml, and a final shaker foam test height which is at least about 70% of the initial shaker foam test height.

Turning now to the amended claims, the Examiner will note that independent product claim 1 has been replaced by newly drafted claim 37. This claim is drawn to a foamer product including enzymatically hydrolyzed wheat gluten protein dispersed in aqueous liquid and having specific ranges of solids and ash content, as well as a shaker foam height limitation. Independent claim 18 is directed to a method of preparing a foamer product and involves the preferred technique disclosed in the specification, i.e., first preparing enzymatically hydrolyzed wheat gluten protein dispersed in aqueous liquid, and thereafter solubilizing in such liquid initially solid, previously hydrolyzed wheat gluten protein. An example of this preferred two-step process is set forth in Examples 1-3, i.e., Example 1 describes the preferred technique for preparing the liquid product, Example 2 describes production of the solid hydrolyzed product and Example 3 teaches the preferred method for combining the products of Examples 1 and 2 to achieve the final foamer product. Finally, independent claim 35 remains as originally presented, and is drawn to personal care products

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selected from a specific group, which products include therein a quantity of the foamer product of claim 1.

In the action, certain of the claim terms were deemed indefinite. Although applicants could take issue with these rejections, it is deemed more expedient to present independent claim 37 which avoids the objected to terms. In this regard however, claims 35 and 36 were rejected under § 112 as allegedly being dependent upon claim 1. However, claim 35 is an independent claim but merely incorporates the foamer product limitations of claim 1. Insofar as the "liquid hydrolyzed grain protein" and "initially solid hydrolyzed grain protein" limitations are concerned, these have been remedied by appropriate claim amendment and by the foregoing explanation of the preferred products and methods of the invention. Therefore, all rejections under § 112 should be withdrawn.

Turning now to the prior art, the principal reference in all rejections was the Gunther patent. This patent is directed to aerating proteins produced by a process involving an initial acid hydrolysis followed by treatment with pepsin. The preferred protein disclosed as useful in the '816 patent is soy protein, and there is no disclosure whatsoever regarding the use of wheat gluten protein as herein claimed. Moreover, the present claims recite that the liquid product has a solids content of from about 15-25% by weight and an ash content of *up to about* 2.5% by weight; that is, the *maximum* ash content is around 2.5%. This is very different than the '816 patent. As noted, there is no teaching in the reference of the use of wheat gluten protein. Moreover, the reference does not describe a liquid product at all, and indeed the ash content of the '816 patent is 14%, significantly above the

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maximum ash content now claimed. It is understood in the art that significant acid hydrolysis leads to relatively high ash contents, but such high ash products are to be avoided in the context of the present invention.

The secondary reference to Gibson et al. does not remedy these deficiencies. Indeed, the '540 patent is related in terms of subject matter with the primary Gibson patent, but discloses the concept of plural polyvalent ions such as calcium and zinc with the Gunther-type aerating proteins. Here again, there is nothing in the '450 patent which describes the use of wheat gluten protein as herein claimed, and there is no teaching of the solids content or ash limitations of the present claims. While the Examiner refers to col. 8, ll. 30-62 and the teaching of "less than 19% ash", this is a far cry from any effective teaching of a *maximum* of 2.5% ash. In short, even if these two references are indiscriminately combined, there is no effective disclosure of anything approximating the now claimed invention.

The Keiner reference is also cited, apparently for its disclosure of a hair preparation including protein hydrolysates. However, this reference contains not teachings bearing upon the presently claimed foamer products, and is relevant only insofar as it describes hydrolysates in general as a part of hair preparations. Accordingly, this reference does not anticipate or render obvious the claimed invention, alone or in combination with the other references of record.

Any additional fee which is due in connection with this amendment should be applied against our Deposit Account No. 19-0522.

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In view of the foregoing, a Notice of Allowance appears to be in order and such is
courteously solicited.

Respectfully submitted,

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